

Exhibit D

From: Willsey, Peter [mailto:pwillsey@cooley.com]
Sent: Wednesday, November 07, 2007 3:42 PM
To: Samanta, Tina; Bennett, Iris E; Arato, Cynthia S.; Christopher McGrath; sdonofrio@mindspring.com; jlg@jlgraubart.com
Cc: Wieder, Stephen; Hughes, Brendan; McKinnon, Shannon; Barenholtz, Celia Goldwag
Subject: RE: XM -- Search Terms

Tina --

To address the final paragraph in your email, we need to mark our documents with confidentiality designations before they go out the door. We cannot do that without knowing how many confidentiality tiers will be in the order, or what persons will be entitled to see particular categories of confidential documents. Thus, while we appreciate your offer to treat all documents as "confidential -- outside counsel only" until a protective order is entered, your proposal is impractical given the circumstances. At any rate, I hope that we can push the protective order forward as quickly as possible, which will alleviate the need for any interim confidentiality agreement.

We will respond to your other points by separate email.

Peter

From: Samanta, Tina [mailto:TSamanta@gibsondunn.com]
Sent: Wednesday, November 07, 2007 3:30 PM
To: McKinnon, Shannon; Bennett, Iris E; Arato, Cynthia S.; Christopher McGrath; sdonofrio@mindspring.com; jlg@jlgraubart.com
Cc: Willsey, Peter; Wieder, Stephen; Hughes, Brendan
Subject: RE: XM -- Search Terms

Shannon:

Certainly, we will get back to you regarding additional terms on the search list, which we discussed with you in part during our meet and confer.

We would like to clarify your statement implying that XM cannot move forward with any document production until such list is finalized. Our understanding is that our discussions regarding search terms do not impact any "core" production by XM, and moreover that we cannot come to agreement on a search term list until we receive such "core" production. Specifically, it was XM that asked that we first review XM's "core" production before attempting to finalize any search term list and we previously agreed to this proposal. While we understand that there is still one issue regarding metadata outstanding with respect to the parties' agreement on ESI, we expect that this issue should be resolved shortly and moreover, it should not impact any "core" production of hard copy documents and email. Also, you have asked us to accept that the search terms list should be more limited than our proposed list based on representations that certain terms generate too many hits. We certainly take your representations to be in good faith, but note that this is an example of how the subject of search terms requires ongoing dialogue. Thus, as we have stated from the outset of this action, we do not agree that XM should only conduct a single search for electronic documents in this case, regardless of the circumstances.

We also recognize that the parties have not yet finalized an agreed-upon protective order, which is why we proposed by email dated October 11 that we would treat all documents produced by you as "attorneys' eyes only" while a final protective order is pending. We have received no response to this email, but to ensure that there is no confusion, we will treat all documents as restricted to outside counsel employed by Gibson, Jenner and the Nota plaintiffs' firms. This is of course without prejudice to any of the plaintiffs' positions regarding the protective order or to change the treatment of any documents produced once a final protective order is entered.

Regards,
Tina

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From: McKinnon, Shannon [mailto:smckinnon@cooley.com]
Sent: Tuesday, November 06, 2007 2:52 PM
To: Bennett, Iris E; Samanta, Tina; Arato, Cynthia S.; Christopher McGrath; sdonofrio@mindspring.com; jlg@jlgraubart.com
Cc: Willsey, Peter; Wieder, Stephen; Hughes, Brendan
Subject: XM -- Search Terms

Dear Counsel:

As we mentioned during our meet and confer today, we are attempting to finalize our search term list as quickly as possible in order to move forward with our review and production. In addition to the search terms which we circulated on November 5, 2007, we will add three additional terms which relate to a code name for the devices. These terms are:

Player w/3 digital
Player w/3 audio
Player w/3 MP3

In the interest of progressing on this issue, we ask that you please identify any additional search terms which you think should be included on the search term list by 12pm on November 8, 2007 and we will consider them. Thank you.

Best,

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